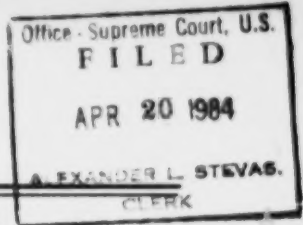


No. 83-1550



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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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LITTON SYSTEMS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION**

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REX E. LEE  
*Solicitor General  
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Petitioner contends that the court of appeals erred in reversing an order dismissing an indictment on the ground that delay in prosecution violated the Sixth Amendment right to a speedy trial and also mandated dismissal under Fed. R. Crim. P. 48(b).

On April 6, 1977, petitioner was indicted in the United States District Court for the Eastern District of Virginia for filing a false claim, in violation of 18 U.S.C. 287. On May 25, 1977, the district court dismissed the indictment on grounds of prosecutorial misconduct (Pet. App. A48-A59). On April 4, 1978, the court of appeals reinstated the indictment (Pet. App. A34-A45; 573 F.2d 195, cert. denied, 439 U.S. 828 (1978)). On December 8, 1978, on petitioner's motion, the case was transferred to the Southern District of Mississippi. On December 27, 1982, the district court dismissed the indictment on the ground that delay in prosecution violated petitioner's Sixth Amendment right to a

speedy trial and mandated dismissal under Fed. R. Crim. P. 48(b) (Pet. App. A17-A33). The court of appeals reversed (Pet. App. A1-A14; 722 F.2d 264).

Petitioner contends (Pet. 10-16) that the court of appeals has misapplied the balancing test of *Barker v. Wingo*, 407 U.S. 514 (1972), by requiring the defense to prove prejudice resulting from pretrial delay. Petitioner further contends (Pet. 17-23) that the court below erred in ruling that dismissal under Fed. R. Crim. P. 48(b) is inappropriate. Finally, petitioner contends (Pet. 23-29) that the vindictive procurement of an indictment coupled with a deliberate abandonment of the prosecution compelled dismissal of the indictment. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court.<sup>1</sup> The court of appeals' decision places petitioner in precisely the same position it would have occupied if the district court had denied its motion to dismiss. If petitioner is acquitted following a trial in the merits, its contentions will be moot. If, on the other hand, petitioner is convicted and its conviction is affirmed on appeal, it will then be able to present its contentions to this Court, together with any other claims it may have, in a petition for a writ of certiorari seeking review of a final judgment against it. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.<sup>2</sup>

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<sup>1</sup> The delay attendant upon further interlocutory review at this time is especially inappropriate here, where petitioner's grievance is the claimed lack of a speedy trial.

<sup>2</sup> Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE  
*Solicitor General*

APRIL 1984